

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GREGORY MOYA,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.
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USDC SDNY
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12 CIV 7762 (RPP)

10 CR 739-2 (RPP)

OPINION & ORDER

ROBERT P. PATTERSON, JR., U.S.D.J.

On May 27, 2011, this Court sentenced Gregory Moya ("Mr. Moya") to serve sixty months imprisonment followed by three years supervised release for participating in a conspiracy to distribute, and possess with intent to distribute, a controlled substance in violation of 21 U.S.C. § 846. (See J. in a Criminal Case ("Final J."), May 27, 2011, No. 10 CR 739-2, ECF No. 46.) On October 17, 2012, Mr. Moya submitted a motion to vacate this sentence pursuant to 28 U.S.C. § 2255. (See Mot. to Vacate, Set Aside, or Correct Sentence ("§ 2255 Mot."), No. 12 CIV 7762, ECF No. 1.) This Court denied Mr. Moya's § 2255 Motion on October 26, 2012. (See Order Denying Mot. to Vacate, Oct. 26, 2012, No. 12 CIV 7762, ECF No. 4.) Mr. Moya now submits a motion for reconsideration of the denial of his § 2255 Motion, specifically requesting that this Court (1) grant him "an opportunity to submit an 'Affirmation'" as to whether the one-year statute of limitations in 28 U.S.C. § 2255 applies to bar his motion to vacate and (2) consider whether he "holds Constitutional rights as to the 'execution of his sentence,' imposed by the Court." (See Mot. for Recons. ("Recons. Mot.") at 4-5, Nov. 19, 2012, No. 12 CIV 7762, ECF No. 5.) For the reasons stated below, Mr. Moya's motion for reconsideration is DENIED.

1. Opportunity to Submit an Affirmation

As discussed in the Order Denying the Motion to Vacate, Mr. Moya's § 2255 Motion was untimely because it was submitted more than four months after the one-year window for filing a motion to vacate had closed. (See Order at 1 (discussing 28 U.S.C. § 2255(f)(1).) This fatal flaw notwithstanding, the Order Denying the Motion to Vacate also discussed at length why Mr. Moya's § 2255 Motion failed on the merits. (See id. at 2-4.) Given the extent of the discussion in the order, this Court concludes that any "Affirmation" which Mr. Moya might submit would be of no help to Mr. Moya's § 2255 Motion. Mr. Moya's first request is therefore denied.

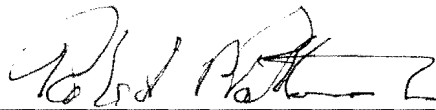
2. Alleged Due Process Violations in Regard to Execution of Sentence

Mr. Moya's second request is also denied. Although this Court is disappointed that Mr. Moya has not received placement in the prison facility location, drug rehabilitation program, or educational and vocational training programs it had recommended, (see Final J. at 2), Mr. Moya has no constitutional right to placement at any particular facility location or in any of these particular programs, see 18 U.S.C. § 3621(b) ("Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau [of Prisons] . . . to determine or change the place of imprisonment of that person."); see also United States v. Williams, 65 F.3d 301, 307 (2d Cir. 1995) (recognizing that Bureau of Prisons has "sole discretion" to determine location of confinement and placement in a particular treatment program).

Accordingly, Mr. Moya's motion for reconsideration of the denial of his § 2255 Motion is
DENIED.

SO ORDERED.

Dated: New York, New York
November 27, 2012



Robert P. Patterson, Jr.
U.S.D.J.

Copies of this Order were sent to:

The Petitioner

Gregory Moya, No. 24-102-265
Federal Correctional Institution
P.O. Box 2000
Fort Dix, NY 08640

Retained Counsel for Petitioner

Milton H. Florez
40-06 Warren Street
Elmhurst, NY 11373
(718) 685-0073
Fax: (718) 685-0077
Email: milton.florez@att.net

Counsel for the United States

Harris Fischman
United States Attorney Office, SDNY
One Saint Andrew's Plaza
New York, NY 10007
(212) 637-2305
Fax: (212) 637-2527
Email: harris.fischman@usdoj.gov